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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,837	09/05/2003	Cesar Antonio Trujillo	960080.401	8405

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EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,837

Applicant(s)

TRUJILLO, CESAR ANTONIO

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 and 05 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/2/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, opposite side fixed to the top grid by cylindrical pins and housings (claim 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Tosdevin (GB 2 206 098 A, December 29, 1988). Tosdevin discloses a box with top and bottom grids (10, 16), opposite sides and side panels (12, 13, 14, 15) that are rectangular frames made of steel (Figure1, page 5, lines 11-14, page 6, lines 22-29, page 7, lines 17-23).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-9, 12, 16, 18-21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin in view of Nesting (EP 1 043 239 A, October 11, 2000).

6. Regarding claim 7, Tosdevin discloses the invention of claim 6 except for the metal frames made from galvanized steel. Nesting discloses a similar box with frames made of galvanized steel (column 4, lines 30-32) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of frames made of galvanized steel as disclosed by Nesting in the box disclosed by Tosdevin to provide frames that are more resistant to corrosion.

7. Regarding claim 8, Tosdevin discloses the buffer panels (11, 351, 44, Figure 1)
8. Regarding claim 9, Tosdevin discloses the buffer panels are capable of restraining the box contents (page 6, lines 12-20 and lines 29-32).
9. Regarding claim 12 Tosdevin discloses the buffer panels are inside the structure of the box (Figures 1 and 3).
10. Regarding claim 16, Tosdevin discloses side fins on the side panels (31, Figure 1).
11. Regarding claim 18, Tosdevin discloses a container rim on the top grid (48, Figure 1).
12. Regarding claim 19, Tosdevin discloses a rim on the bottom grid, the vertical portions of frame angles 17, 18, 19, 20.
13. Regarding claim 20, Tosdevin discloses support feet (21).
14. Regarding claim 21 Tosdevin discloses a housing (46, 47, Figure 3) on each corner of the top grid to the support of the feet of the bottom grid.
15. Regarding claim 23, Tosdevin discloses a plurality of sections (22, 23, 26, Figure 1) forming passages for lift truck forks.
16. Regarding claim 24, Nesting discloses handles on the side panels (12, Figures 1-3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of handles on the side panels as disclosed by Nesting in the box disclosed by Tosdevin to make it easier to handle the side panels and secure them to the opposite sides.

17. Regarding claim 25, Tosdevin discloses the top and bottom grids with two long sides and two short sides and the sides with two uprights.

18. Regarding claim 26, applicant recites dimensions for the box but does not disclose that these dimensions are for any particular purpose or solve any stated problem. The box of Tosdevin as modified by Nesting would be inherently capable of being made to the required dimensions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the dimensions of claim 26 in box disclosed by Tosdevin to provide a box meeting the needed dimensions. In *Gardner v TEC Systems, Inc.* 725 F 2d 1338, 220 USPQ 777 (fed. Cir. 1984), cert. Denied, 469, U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of the relative dimensions of a claimed device and a device having claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art.

19. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin and Nesting as applied to claim 9 in view of Severi (WO 1/51387 A1, July 19, 2001). Tosdevin and Nesting disclose the invention except for the buffer panels made of an elastomeric material and glued to the frames. Severi discloses a similar box with buffer panels of an elastomeric material (plastic) and glued to the frame (21, Figure 1, page 5, line 25 to page 6, line 4 and page 7, lines 16-18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of panels made of an elastomeric material and glued to the frames

as disclosed by Severi in the box disclosed by claim 9 to provide panels of light weight and adequate strength fastened to the frames by a means known in the art.

20. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin and Nesting as applied to claim 7 in view of Kopper (2,598,690) and Hemmerly (6,076,690). Tosdevin and Nesting disclose the invention except for the means for fixing the opposite sides to the top and bottom grids. Kopper discloses a similar box with side frames and opposite sides secured to the bottom grid by cylindrical pins, and housings (13, 6, Figures 3, 4, column 3, lines 43-52). Hemmerly discloses a similar box with opposite sides secured to both top and bottom grids by the use of cylindrical pins and housings (Figures 1-9, column 1, line 55 to column 2, line 13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of cylindrical pins and housings to fix the opposite sides to the top and bottom grids as disclosed by Kopper and Hemmerly in the box disclosed by Tosdevin and Nesting to provide a means for securing the opposite sides without requiring additional fasteners.

21. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin, Nesting, Kopper and Hemmerly as applied to claim 14 in view of Pett et al (4,887,731). The box of claim 14 discloses except for the use of screws for fixing the top and bottom grids to the opposite sides. Pett et al discloses the use of screws to fix cylindrical pins on sides to housings in the bottom grid (Figures 2-4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of screws to fix the cylindrical pins on the sides to the top and

bottom grid as disclosed by Pett et al in the box disclosed in claim 14 to provide positive securement of the opposite sides to the top and bottom grids.

22. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin and Nesting as applied to 16 in view of Hambleton (3,589,547). Tosdevin and Nesting disclose the invention except for the side fin having an elongated rectangular shape. Hambleton disclosed a similar box with side panels (D) having elongated rectangular side fins (37, Figures 12, 14, 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of elongated rectangular side fins as disclosed by Hambleton in the box disclosed by Tosdevin and Nesting to provide a larger contact area for the fin and spread the load applied by the adjacent side over a greater area.

23. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin and Nesting as applied to claim 21 in view of Burrows (2,643,788). Tosdevin and Nesting disclose the invention except for the metal plate having a right-angled isosceles triangle shape. Burrows disclose a similar box with metal plates in the corners of the top grid in a right-angled isosceles triangle shape (19, Figures 1 and 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of with metal plates in the corners of the top grid in a right-angled isosceles triangle shape as disclosed by Burrows in the box disclosed by Tosdevin and Nesting to provide reinforcement to the corners for maintaining the side frames of the top grids at right angles to each other and provide better support for the housing.

24. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tosdevin in view of Jacobson et al (5,903,869). Tosdevin discloses the invention except for the use of a microchip device identification system. Jacobson et al discloses a microchip device for use in packages. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a microchip device as disclosed by Jacobson et al in the box disclosed by Tosdevin to provide a means for identifying the box or providing other information about the contents.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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